

The record in this case consists of the documents on file with the Division of Workers Compensation including the transcript of the Preliminary Hearing held on April 20,

1994, before Administrative Law Judge Steven J. Howard, and the exhibits attached thereto.

ISSUES

The Administrative Law Judge, in his Preliminary Hearing Order dated April 29, 1994, authorized David O. King, D.O., orthopedic surgeon of Chanute, Kansas, as the claimant's authorized physician for treatment for both his left knee and back injuries. Respondent was further ordered to pay outstanding medical bills submitted at the Preliminary Hearing with the claimant's request for payment of prescription drugs being denied.

Respondent files an Application for Review raising the sole issue as to whether the claimant's alleged accidental injury arose out of and in the course of his employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for purposes of preliminary hearing, the Appeals Board finds as follows:

Jurisdiction for the Appeals Board to review this Preliminary Hearing Order is pursuant to K.S.A. 44-534a(a)(2), which sets forth the foregoing issue, if disputed, as an issue considered jurisdictional and subject to review by the Appeals Board.

In the Fall of 1991, the claimant commenced driving a Mack over-the-road semi-truck from Chanute to Kansas City, sometimes making up to two trips per day. This Mack truck was equipped with an airseat which was faulty in that it would fall some eight (8) inches approximately six (6) times during each trip. Claimant started having problems with his left knee because of the faulty seat. He eventually had to stop two or three times between Chanute and Kansas City for purposes of getting out of the truck and walking to relieve the pain.

The claimant reported his left knee problems to the respondent sometime in May 1992. In order to find some relief from the pain, the claimant first consulted a chiropractor for treatment and then tried to obtain further relief from his discomfort at the Ashley Clinic in Chanute, Kansas. The Ashley Clinic then referred the claimant for treatment to an orthopedic surgeon, David O. King, D.O., in Chanute, Kansas, on August 24, 1992. Dr. King, after an examination and evaluation, performed arthroscopic surgery on the claimant's left knee on September 18, 1992. A torn meniscus in his left knee was repaired and significant chondromalacia was found. Payment of this medical treatment was submitted to the claimant's health insurance company and payment was rejected because the injury was reported as work-related.

At the time of the Preliminary Hearing, the claimant was having continuing pain and discomfort in his left knee. Additionally, he had complaints of pain in his lower back which radiated down his left leg with numbness in the lateral two toes of the left foot. Claimant remained unemployed and was receiving Social Security disability payments.

The respondent contends that claimant injured his left knee in June 1992 when he stepped in a hole outside of an ice-cream store located in Independence, Kansas. In regard to the alleged back injury, the respondent argues that the claimant did not mention any back problems until after he had had the knee operation.

Claimant establishes through his testimony that his left knee was injured prior to stepping in a hole in June 1992. Immediately after he stepped in the hole, he did have excruciating pain, however, within twenty-four (24) hours this pain had subsided and the condition of his left knee was no different than prior to stepping in the hole.

Dr. King, in a medical report dated August 31, 1993, admitted as an exhibit on behalf of the claimant at the Preliminary Hearing, reports that the claimant's left knee was hurting him so badly that he was not concerned with the other pain he was having in his back and left leg. As the left knee improved, the persistent pain in his back and left leg became more noticeable. Dr. King concludes that the claimant's history is consistent and it is a plausible explanation for the symptoms he is having with his back and leg pain.

For preliminary hearing purposes, the Appeals Board finds that the claimant has presented credible evidence that it is more probably true than not true that his injuries to his left knee and low back resulted from his work activities while he was driving a truck for the respondent from May 5, 1992 through September 18, 1992.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Steven J. Howard, dated April 28, 1994, is affirmed in all respects and remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of August, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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